

## Railroad Retirement Board

## § 260.5

timely request for waiver or reconsideration is filed as provided in this section, the Director of the bureau or office which issued the erroneous payment decision shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for an oral hearing under this section, the Director of the bureau or office which issued the erroneous payment decision or his or her delegatee shall promptly arrange for the selection of a Board employee to conduct a hearing in the case. The employee designated to conduct a hearing under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the hearing in a fair and impartial manner. The employee designated to conduct a hearing under this section shall promptly schedule a time and place for the hearing and promptly notify the beneficiary of such.

(f) *Oral hearing.* The beneficiary shall upon request have the opportunity to review, prior to the hearing, his or her claim folder and all documents pertinent to the issues raised. A hearing conducted under this section shall be informal. At the hearing the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witnesses or documents;

(2) To cross-examine adverse witnesses who appear at the hearing; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the hearing, the employee who conducts the hearing shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision. The summary of the case shall then be submitted to the Director of the bureau or office which issued the erroneous payment decision.

(h) *Timely review.* The Director of the bureau or office which issued the erro-

neous payment decision shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration is filed or the date that the summary of the case is received from the employee who conducts the hearing, whichever is later.

(i) *Right to appeal adverse decision.* If the Director of the bureau or office which issued the erroneous payment decision renders a decision adverse to the beneficiary, he or she shall further notify the beneficiary of the basis for such determination and that the beneficiary may appeal the decision to the Bureau of Hearings and Appeals, as provided in §260.5.

(j) *Repayment is not a bar to requesting waiver and/or reconsideration.* The fact that a beneficiary may have notified the Board with respect to the method by which he or she could choose to have the recovery made, or the fact that such beneficiary may have actually tendered to the Board a portion or all of the amount of the erroneous payment, shall in no way operate to prejudice his or her right to request reconsideration of the initial erroneous payment determination or to request waiver of recovery.

[47 FR 36809, Aug. 24, 1982, as amended at 55 FR 39146, Sept. 25, 1990]

### **§260.5 Appeal from a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts.**

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts by which he or she claims to be aggrieved.

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(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision of the Bureau of Disability and Medicare Operations, Bureau of Retirement Benefits, Bureau of Survivor Benefits, Office of Retirement and Survivor Programs or the Bureau of Research and Employment Accounts shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section. However, when a claimant fails to file an appeal before the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner described in § 260.3(d).

(d) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings and Appeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as hearings officer with respect to a case. Such hearings officer shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(e) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(f) *Evidence presented in support of appeal.* The appellant, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal. If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained subsequent to an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall notify the appellant or his or her representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause. The hearings officer shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(g) *Submission of written argument in lieu of oral hearing.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(h) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be

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held pursuant to the provisions of this section, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearings officer shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) A party to the proceeding may object to the time and place of the hearing or as to the stated issues to be resolved by filing a written notice of objection with the hearings officer. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(3) The hearings officer shall rule on any objection timely filed by a party under this subsection and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed

time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(i) *Preservation of evidence presented.* All evidence presented by the appellant and all evidence developed by the hearings officer shall be preserved. Such evidence, together with a record of the arguments, oral or written and the file previously created in the adjudication of the claim, shall constitute the record on appeal. After an appeal is filed, the compilation of the record shall be initiated by the inclusion therein of the file created in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record shall be available for examination by the appellant or his or her representative at any time during the pendency of the appeal.

(j) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may move for an extension of time to submit evidence and the hearings officer may grant the motion upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

[47 FR 36809, Aug. 24, 1982, as amended at 48 FR 51448, Nov. 9, 1983; 52 FR 11017, Apr. 6, 1987; 55 FR 39146, Sept. 25, 1990]